

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

U. S. COMMODITY FUTURES
TRADING COMMISSION,

Plaintiff,

- against -

WILLIAM BYRNES,
CHRISTOPHER CURTIN,
THE NEW YORK MERCANTILE
EXCHANGE, INC., and
RON EIBSCHUTZ,

Defendants.

CIVIL ACTION NO.
13-CV-1174 (VSB)

DECLARATION OF SAMUEL F. ABERNETHY

SAMUEL F. ABERNETHY, pursuant to 28 U.S.C. § 1746, declares as follows:

1. I am a member of the Bar of this Court and of the firm of Menaker & Herrmann LLP, attorneys for defendant Christopher Curtin ("Curtin").
2. I am personally familiar with the matters set forth herein and make this declaration in support of Curtin's motion for an order pursuant to Federal Rule of Civil Procedure 56 granting him summary judgment dismissing the Amended Complaint as to him with prejudice.
3. Attached hereto as Exhibit 1 is a true and correct copy of the plaintiff Commodity Futures Trading Commission's ("CFTC") Amended Complaint, filed on May 8, 2013 (Dkt. No. 19).
4. Attached hereto as Exhibit 2 is a true and correct copy of Curtin's Answer to the Amended Complaint, filed on January 31, 2014 (Dkt. No. 40).

5. Attached hereto as Exhibit 3 is a true and correct copy of the CFTC's Answers and Objections to Defendant NYMEX's Interrogatories, dated March 9, 2015.

6. Attached hereto as Exhibit 4 is a true and correct copy of the CFTC's Supplemental Answers and Objections to NYMEX's Interrogatories, dated April 29, 2016.

7. Attached hereto as Exhibit 5 is a true and correct copy of the CFTC's Answers and Objections to Curtin's Second Set of Interrogatories, dated February 16, 2016.

8. Attached hereto as Exhibit 6 is a true and correct copy of the CFTC's Responses and Objections to Curtin's Requests for Admission, dated February 16, 2016.

9. Attached hereto as Exhibit 7 is a true and correct copy of pertinent excerpts from the deposition of Julie Holzrichter, taken September 23, 2015.

10. Attached hereto as Exhibit 8 is a true and correct copy of CFTC Exhibit 2 from the deposition of Julie Holzrichter, taken September 23, 2015.

11. Attached hereto as Exhibit 9 is a true and correct copy of pertinent excerpts from the deposition of Ralph Cusumano, taken October 2, 2015.

12. Attached hereto as Exhibit 10 is a true and correct copy of pertinent excerpts from the deposition of Valery Rouet, taken October 13, 2015.

13. Attached hereto as Exhibit 11 is a true and correct copy of pertinent excerpts from the deposition of Nour Beyhum, taken October 14, 2015.

14. Attached hereto as Exhibit 12 is a true and correct copy of pertinent excerpts from the deposition of Sean Keating, taken October 16, 2015.

15. Attached hereto as Exhibit 13 is a true and correct copy of pertinent excerpts from the deposition of Thomas Holleran, taken October 21, 2015.

16. Attached hereto as Exhibit 14 is a true and correct copy of pertinent excerpts from the deposition of Bradley Hrycenko, taken November 3, 2015.

17. Attached hereto as Exhibit 15 is a true and correct copy of pertinent excerpts from the deposition of Ron Eibschutz, taken November 19, 2015.

18. Attached hereto as Exhibit 16 is a true and correct copy of pertinent excerpts from the deposition of Christopher D. Curtin, taken November 24, 2015.

19. Attached hereto as Exhibit 17 is a true and correct copy of pertinent excerpts from the deposition of William Byrnes, taken November 23, 2015.

20. Attached hereto as Exhibit 18 is a true and correct copy of the Expert Report of Hendrik Bessembinder and the exhibits thereto, dated February 16, 2016, provided to defendants pursuant to Fed. R. Civ. P. 26(a)(2).

21. Attached hereto as Exhibit 19 is a true and correct copy of the Rebuttal Expert Report of Hendrik Bessembinder and the exhibits thereto, dated March 17, 2016, provided to defendants pursuant to Fed. R. Civ. P. 26(a)(2).

22. Attached hereto as Exhibit 20 is a true and correct copy of the Expert Report of Robert Silvay and the exhibits thereto, dated February 16, 2016, provided to plaintiff pursuant to Fed. R. Civ. P. 26(a)(2).

23. Attached hereto as Exhibit 21 is a true and correct copy of the Rebuttal Expert Report of Robert Silvay and the exhibits thereto, dated March 17, 2016, provided to plaintiff pursuant to Fed. R. Civ. P. 26(a)(2).

24. Attached hereto as Exhibit 22 is a true and correct copy of pertinent excerpts from the deposition of Hendrik Bessembinder, taken May 10, 2016.

25. Attached hereto as Exhibit 23 is a true and correct copy of pertinent excerpts from the deposition of Robert Silvay, taken May 12, 2016.

26. Attached hereto as Exhibit 24 is a true and correct copy of the CFTC's pre-motion letters to defendants Byrnes and Curtin's pre-motion letters, dated and filed on October 13, 2016 (Dkt. No. 123).

27. Attached hereto as Exhibit 25 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0006562, the first call listed in Exhibit B of the Amended Complaint, which took place on May 14, 2008.

28. Attached hereto as Exhibit 26 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0006567, the second call listed in Exhibit B of the Amended Complaint, which took place on May 29, 2008.

29. Attached hereto as Exhibit 27 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0006522, the third call listed in Exhibit B of the Amended Complaint, which took place on June 10, 2008.

30. Attached hereto as Exhibit 28 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0006528, the fourth call listed in Exhibit B of the Amended Complaint, which took place on June 23, 2008.

31. Attached hereto as Exhibit 29 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0006529, the fifth call listed in Exhibit B of the Amended Complaint, which took place on June 24, 2008.

32. Attached hereto as Exhibit 30 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0006577, the sixth call listed in Exhibit B of the Amended Complaint, which took place on October 10, 2008.

33. Attached hereto as Exhibit 31 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0006578, the seventh call listed in Exhibit B of the Amended Complaint, which took place on October 13, 2008.

34. Attached hereto as Exhibit 32 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0006594, the eighth call listed in Exhibit B of the Amended Complaint, which took place on November 25, 2008.

35. Attached hereto as Exhibit 33 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0018233, the ninth call listed in Exhibit B of the Amended Complaint, which took place on January 16, 2009.

36. Attached hereto as Exhibit 34 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0018264, the tenth call listed in Exhibit B of the Amended Complaint, which took place on January 26, 2009.

37. Attached hereto as Exhibit 35 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0018169, the eleventh call listed in Exhibit B of the Amended Complaint, which took place on February 5, 2009.

38. Attached hereto as Exhibit 36 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0018179, the twelfth call listed in Exhibit B of the Amended Complaint, which took place on February 23, 2009.

39. Attached hereto as Exhibit 37 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0018194, the thirteenth call listed in Exhibit B of the Amended Complaint, which took place on March 3, 2009.

40. Attached hereto as Exhibit 38 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0018234, the fourteenth call listed in Exhibit B of the Amended Complaint, which took place on March 9, 2009.

41. Attached hereto as Exhibit 39 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0018235, the fifteenth call listed in Exhibit B of the Amended Complaint, which took place on March 10, 2009.

42. Attached hereto as Exhibit 40 is a true and correct copy of the CFTC's transcript of the audio recording identified as 13CIV1174-CFTC-0018236, the sixteenth call listed in Exhibit B of the Amended Complaint, which took place on March 16, 2009.

43. Attached hereto as Exhibit 41 is a true and correct copy of the resume of defendant Curtin, identified as 13CIV1174-CFTC-0018023 and marked at his deposition at CFTC Exhibit 81.

44. Attached hereto as Exhibit 42 is a true and correct copy of pertinent excerpts from the interview of Abraham Glass, taken on January 14, 2011, identified as 13CIV1174-CFTC-0189979 to 13CIV1174-CFTC-0189988.


45. Attached hereto as Exhibit 43 is a true and correct copy of pertinent excerpts from the second interview of Abraham Glass, taken on March 23, 2011, identified as 13CIV1174-CFTC-0189917 to 13CIV1174-CFTC-0189947.

46. Attached hereto as Exhibit 44 is a true and correct copy of the official transcript of the pre-motion conference held before the Court on October 20, 2016 (Dkt. No. 127).

47. No previous application has been made for the relief sought herein.

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on the 15th day of December, 2016.



Samuel F. Abernethy